

OA 91 Criminal Complaint

United States District Court

NORTHERN

DISTRICT OF

CALIFORNIA

UNITED STATES OF AMERICA

V.

CRIMINAL COMPLAINT

WDB

JOHN DOE (aka GILBERTO AGUILAR, aka GILBERTO AGUILAR GUTIERREZ),

FILED

Case Number 4 - 07 - 70434

JUL 23 2007

(Name and Address of Defendant)

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

I, the undersigned complainant being duly sworn, state that the following is true and correct to the best of my

knowledge and belief. On or about July 15, 2005 in Alameda County, in
 the Northern District of California defendant(s) did,

(Track Statutory Language of Offense)

make a willful and knowing false statement in an application for a passport.

in violation of Title 18 United States Code, Section(s) 1542

I further state that I am a(n) Special Agent - Diplomatic Security Service and that this complaint is based on the
 following facts:
 Official Title

SEE ATTACHED AFFIDAVIT OF SPECIAL AGENT MICHAEL S. DIAMOND

PENALTIES:

Imprisonment for not more than ten (10) years and/or a fine of
 not more than two hundred fifty thousand (\$250,000) dollars, a one hundred
 (\$100.00) dollar special assessment, and three (3) years of supervised release.

Continued on the attached sheet and made a part hereof:

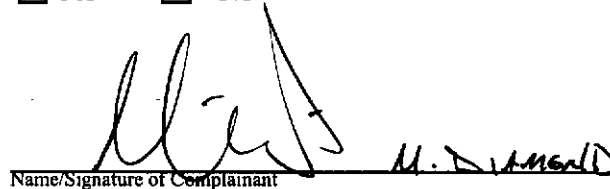
☒ Yes ☐ No

Approved

As To

Form: CHINHAYI J. COLEMANAUSA

Name/Signature of Complainant


M. S. DIAMOND

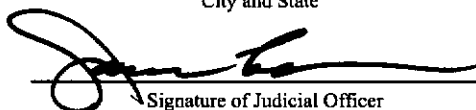
Sworn to before me and subscribed in my presence,

7-23-07
Dateat San Francisco, California

City and State

JAMES LARSON, MAGISTRATE JUDGE

Name & Title of Judicial Officer


Signature of Judicial Officer

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Michael S. Diamond, being duly sworn, do hereby state:

1. I am a Special Agent employed by the Diplomatic Security Service (DSS), which is an agency of the United States Department of State. DSS Special Agents are empowered under Title 22 U.S.C. § 2709 to investigate passport fraud.

2. I have a bachelor's degree from the University of Virginia and am a graduate of both the Federal Law Enforcement Training Center's Criminal Investigator Training Program and the Department of State's Basic Special Agent Course. I have been employed by DSS since October 2005, and have received, and receive on an ongoing basis, training in the laws, rules, and regulations concerning passports.

3. Based upon the facts described below, I believe that there is probable cause to believe that John Doe (aka Gilberto Aguilar aka Gilberto Aguilar Gutierrez, hereinafter referred to as "John Doe") made a false statement in an application for a passport, in violation of 18 U.S.C. § 1542. As described more fully below, on or about July 15, 2005, John Doe (aka Gilberto Aguilar aka Gilberto Aguilar Gutierrez) applied for a United States passport in the assumed identity of a deceased U.S. citizen. This affidavit is submitted for the purpose of establishing probable cause in support of a criminal complaint; therefore, it does not contain every fact, piece of information, or piece of evidence concerning this alleged violation.

General Background Regarding Passports

4. The Passport Act of 1926, as amended, was in effect throughout the period of this investigation. This act, codified in 22 U.S.C. § 211a, authorizes the United States Secretary of State to grant and issue United States passports under rules prescribed by the President and/or other federal laws. These rules state that in order to receive a United States passport, an applicant must complete and submit an application to the State Department, including proof of American citizenship, usually a birth certificate, and proof of identity, usually a driver's license. The rules also allow officers at County Clerk Offices and United States Post Offices to accept passport applications and forward them to the State Department for processing.

Facts Supporting Probable Cause

Gilberto Aguilar

5. Gilberto Aguilar was born on May 19, 1939, in Oakland, California. His birth certificate lists his father as Edward Aguilar and his mother as Conchar Gutierrez. Agent Virgil Kayl of the Social Security Administration and I conducted a search of birth records, which revealed that there was only one Gilberto Aguilar born on May 19, 1939, in Oakland.

6. According to Army records, Gilberto Aguilar (born on May 19, 1939) was a U.S. Army veteran, and died at the Veterans Administration Medical Center Hospital in San Francisco, California on March 5, 2000. His death certificate shows Elizabeth Villanueva as his sister, Edward Aguilar as his father, and Concha Gutierrez as his mother.

Fraud Indicators Pertaining to Gilberto Aguilar

7. On September 21, 2006, I consulted Special Agent Virgil Kayl of the U.S. Social Security Administration Office of the Inspector General. Special Agent Kayl discovered that six different Social Security numbers have been issued to individuals using the identity of Gilberto Aguilar, including the May 19, 1939 date of birth. The first Social Security Number issued to an individual with this identity was 566-48-6107. Special Agent Kayl stated to me that multiple Social Security Numbers are indicators of fraud, and that the true person is usually the first person issued a Social Security Number in a given identity.

8. Upon reviewing Social Security records, Special Agent Kayl discovered that the individual assigned Social Security Number 566-48-6107 had died in a Veteran's Administration hospital on March 5, 2000. This individual listed Ralph Aguilar as next-of-kin.

9. On September 22, 2006, Special Agent Kayl interviewed Ralph Aguilar via telephone. Ralph Aguilar, who resides in Iowa, stated his brother Gilberto Aguilar (born on May 19, 1939) had served in the Army in the early 1960s and had died March 2000 in a veteran's facility. Ralph Aguilar provided Gilberto Aguilar's military service number, which corresponds with that of a valid military record.

1 10. Following my conversation with Special Agent Kayl, I retrieved a certified copy
2 of the death certificate and relevant military records for Gilberto Aguilar, with Social Security
3 Number 566-48-6107. The information on the death certificate is consistent with that of the
4 birth certificate and military records. The military records included fingerprints and some
5 biographical details for Gilberto Aguilar.

6 11. The Social Security Number used by John Doe (571-04-5130) was issued to an
7 individual claiming to be Aguilar in 1981. A duplicate card with the same number was issued to
8 an individual claiming to be Aguilar in 1984. In 1999, an individual applied for and received a
9 duplicate SSN card for this same number and provided California Driver License C4122001 as
10 evidence of identity. This California Driver License is issued to Gilberto Aguilar Gutierrez,
11 21657 Arbor Court, Hayward, California 94541.

12 12. On October 6, 2006, I reviewed law enforcement records on file with the
13 Department of Homeland Security. The files revealed a long history of immigration fraud
14 associated with the Gilberto Aguilar birth certificate from Alameda County, dating from the
15 deportation of an individual falsely claiming the identity in 1968. The records also detail a
16 history of law enforcement interviews with the true Gilberto Aguilar and his family.

17
18 John Doe's Application for a Passport

19 13. On or about July 15, 2005, a person purporting to be Gilberto Guitierrez Aguilar
20 ("John Doe") submitted an application for a United States passport at the Hayward Post Office in
21 Alameda County, which is located in the Northern District of California. In completing the
22 application, the applicant swore, "I solemnly swear (or affirm) that the statements made on this
23 application are true and correct."

24 14. On the passport application, John Doe represented that he was born on May 19,
25 1939, in Oakland, California. However, Agent Kayl and I have conducted a search, and the true
26 Gilberto Aguilar was the only person born on May 19, 1939 in Oakland with his name, or any
27 variation of it.

28 15. In support of his application for the passport, John Doe submitted California
Driver's License number C4122001. This California Driver License is issued to Gilberto

1 Aguilar Gutierrez, 21657 Arbor Court, Hayward, California 94541. A fingerprint comparison
2 conducted by the Department of Homeland Security revealed on or about October 17, 2006 that
3 the fingerprint on this California Driver's License does not match the print of the U.S. Army
4 records of the true Gilberto Aguilar.

5 16. In support of his application for the passport, John Doe also submitted the birth
6 certificate issued to the true Gilberto Aguilar. On September 15, 2006, I consulted with the
7 Alameda County Clerk's office regarding the birth certificate submitted in support of the
8 passport application. The County Clerk's Office confirmed that the birth certificate that John
9 Doe presented was a re-issue of a birth certificate on file for Gilberto Aguilar. In conducting our
10 investigation, Agent Kayl and I interviewed siblings of the true Gilberto Aguilar, who confirmed
11 that the birth certificate belonged to their deceased brother, and that John Doe (pictured on the
12 California Driver's License described above) is not their brother.

13 17. On October 18, 2006 Special Agent Kayl and I interviewed Elizabeth Villanueva,
14 listed as informant on Gilberto Aguilar's death certificate. Elizabeth stated that the true Gilberto
15 Aguilar was her brother. She inspected the birth certificate that John Doe submitted in support
16 of his passport application and identified it as a copy of her brother's birth certificate. She
17 corroborated the death of the true Gilberto Aguilar on March 5, 2000. She also provided a
18 detailed family history from memory, consistent with information in the immigration files and
19 Gilberto Aguilar's birth certificate, military records, and death certificate. She showed me a
20 photograph of Gilberto Aguilar as a young man, which did not resemble John Doe. She could
21 not identify John Doe's photograph, and confirmed that John Doe was not her brother Gilberto
22 Aguilar.

23 18. On the July 15, 2005 application for the passport, John Doe represented that his
24 Social Security number is 571-04-5130. As discussed above in Paragraphs 6 and 11, this Social
25 Security Number was issued to the identity of Gilberto Aguilar, who died at a Veteran's
26 Administration Hospital on March 5, 2000.

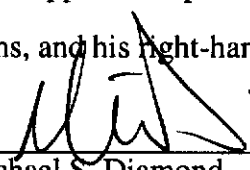
27 19. The passport office referred this application to the Diplomatic Security Service
28 for further investigation based on several fraud indicators.

1 Summary and Conclusion

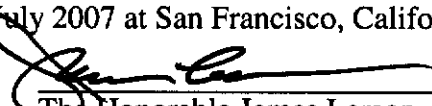
2 20. Based on a review of the birth certificate and the death certificate of the true
3 Gilberto Aguilar, interviews with family members, and information found in law enforcement
4 files and military records, I believe the true Gilberto Aguilar to be the individual who died on
5 March 5, 2000 in a Veteran's Administration Hospital. Consequently, I believe that John Doe is
6 an imposter, and that he made false statements in his passport application, including his name,
7 his date of birth, and his place of birth.

8 21. Based upon my training and experience, I know that people who are seeking false
9 identification often assume the identity of living or deceased Americans, and then obtain
10 government identification documents such as United States passports in their names. Based
11 upon my training, experience, and my examination of the history of the Gilberto Aguilar
12 identity, I believe that John Doe has assumed the identity of a deceased American, and then
13 attempted to obtain a United States passport in this deceased individual's name.

14 22. Based upon the facts described above, I believe there is probable cause to believe
15 that John Doe (aka Gilberto Aguilar aka Gilberto Aguilar Gutierrez) made a false statement in
16 his application for a passport, in violation of 18 U.S.C. § 1542, when he falsely stated his name
17 was Gilberto Aguilar, born May 19, 1939, on his passport application dated July 15, 2005. John
18 Doe is uniquely and specifically described by his passport application photograph, his
19 Department of Motor Vehicles identification photographs, and his right-hand thumbprint.

20
21 
22 Michael S. Diamond
23 Special Agent
Diplomatic Security Service
San Francisco Field Office

24 Subscribed and sworn before me this ~~23~~ day of July 2007 at San Francisco, California.

25 
26 The Honorable James Larson
27 United States Magistrate Judge
Northern District of California
28 San Francisco, California